

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

BACHETTI BROS.,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 05A-06-001-JEB
	)	
STEPHANIE REED,	)	
	)	
Appellant.	)	

Submitted: January 18, 2006  
Decided: March 17, 2006

*Appeal from a Decision of the Industrial Accident Board.  
Affirmed.*

**OPINION**

*Appearances:*

Sean A. Dolan, Esquire, Wilmington, Delaware.  
Attorney for Bachetti Bros.

Michael I. Silverman, Esquire, Wilmington, Delaware.  
Attorney for Stephanie Reed.

**JOHN E. BABIARZ, JR., JUDGE**

This is the Court's decision affirming an award of benefits for a recurrence of total disability to Claimant Stephanie Reed. The decision focuses on the application of the principle of *res judicata* to awards made by administrative agencies.

Claimant injured her right arm in September 2001, when she struck her elbow against a metal casing while working for Bachetti Brothers, a delicatessen. Her employer accepted this injury as compensable and paid Claimant temporary total disability benefits. After Employer filed a petition to terminate benefits, the parties entered into a stipulation terminating the total disability benefits. One week prior to termination of her benefits, Claimant filed a petition for additional compensation, asserting that her disability had recurred. After a hearing, the Board awarded Claimant total disability benefits based on her doctor's opinion that Claimant suffered from a pain disorder known as Reflex Sympathetic Dystrophy (RSD) as a result of the work accident and that she was totally unable to work. Shortly thereafter, the parties filed an agreement reiterating the Board's findings.

Claimant had also filed a petition for permanent impairment benefits for her right upper extremity as a result of the work accident. The Board awarded her benefits for a 30 percent loss, and the parties filed an agreement reflecting that decision. Claimant then filed a petition for disfigurement benefits. This petition was withdrawn, but the parties filed an agreement for 12.5 weeks of disfigurement

benefits.

Four months later, Employer petitioned the Board to review and terminate Claimant's total disability benefits, arguing that she did not suffer from RSD and that her injuries were not caused by the work accident. The parties stipulated to being heard by a hearing officer, who found that Claimant remained totally disabled. The hearing officer also concluded that the causation issue had previously been addressed and could not be reviewed pursuant to 19 *Del. C.* § 2347, which authorizes periodic review of a claimant's condition.

On appeal to this Court, Bachetti argues that the hearing officer erred as a matter of law in concluding that the Board may not revisit the questions of whether Claimant suffers from RSD or whether her condition was caused by the work accident. Claimant argues that substantial evidence exists to support the hearing officer's finding of total disability and there was no error in the ruling that reconsideration of the causation issue is barred by the doctrine of *res judicata*.

In reviewing a decision of an administrative board or, in this case, a hearing officer, this Court sits not as a trier of fact but as a court of appeals.<sup>1</sup> The Court's function is to determine whether substantial evidence existed to support the factual

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<sup>1</sup>*Whalen v. State*, 1994 WL 636915 (Del. Super.).

findings made below and to determine whether the decision is free from legal error.<sup>2</sup>

The crux of the hearing officer's decision is that 19 *Del. C.* § 2347 provides certain exceptions to the general rule that *res judicata* bars reconsideration of issues already decided by an administrative agency, but that the exceptions are limited to whether Claimant's condition has changed, either for the better or for the worse. The Supreme Court has recognized that awards of compensation boards are "generally held to be *res judicata* and thus, immune from collateral attack," unless the award is void.<sup>3</sup> In addition, § 2347 provides that an interested party may seek review of the injured employee's condition:

On the application of any party in interest on the ground that the **incapacity of the injured employee has subsequently terminated**, increased, diminished or recurred or that the status of the dependant has changed, the Board may at any time, but not oftener than once in 6 months, review any agreement or award. (Emphasis supplied.)

Employer's petition was for termination, which is one of the statutory grounds for review, but Employer's actual position is that Claimant never suffered from RSD and that her condition is not related to the work accident. In other words, Employer asked the hearing officer to review the correctness of a prior award, which is precluded by

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<sup>2</sup>*Id.*; DEL. CODE ANN. tit. 29, § 10142(d).

<sup>3</sup>*Taylor v. Hatzel & Buehler*, 258 A.2d 905, 908 (Del. 1969). *See also Harris v. Chrysler Corp.*, 1988 WL 44783 (Del. Supr.) (stating that "the doctrine of *res judicata* is not a bar to the board's exercise of its authority conferred by 19 Del.C. § 2347 to review, modify, or terminate previous awards upon proof of subsequent change of condition").

*res judicata*.<sup>4</sup> Thus, the hearing officer correctly considered the question of whether Claimant's disability had terminated, pursuant to § 2347 and also correctly concluded that *res judicata* precluded consideration of the causation issue as well as the question of whether Claimant had ever had RSD.<sup>5</sup>

For all these reasons, the decision of the hearing officer denying Employer's petition to terminate temporary total disability benefits to Claimant Stephanie Reed is hereby *Affirmed*.

***It Is So ORDERED.***

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Judge John E. Babiarz, Jr.

JEB,jr/ram/bjw  
Original to Prothonotary

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<sup>4</sup>*Betts v. Townsends, Inc.*, 765 A.2d 531, 534 (Del. 2000).

<sup>5</sup>The Court notes that the doctrine of *res judicata* does not preclude the Board from reconsidering the issue of causation if the issue is presented in a petition that is separate and distinct from the one initially considered. In *Betts v. Townsend*, the Board found that the claimant's work accident was the cause of a knee injury that necessitated surgery and awarded him temporary total disability benefits for the period of recuperation following surgery. When the claimant later filed for permanent partial disability benefits, the Board found that his condition was a product of his age and his arthritis, not the work accident, and denied the petition. The Supreme Court held that neither *res judicata* nor collateral estoppel barred the Board from reconsidering the issue of causation as it related to partial disability because that was a separate and distinct issue from temporary total disability for the recuperative period after surgery. 765 A.2d 531 (Del. 2000).